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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215734
Party	Defendant The Solution Group Corp
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Attachments	141211jp.Appl. Resp. to Opp. Motion to set Aside Admission.pdf(127492 bytes) Exhibit A.JewishHolidays .Yom Kippur.pdf(59781 bytes) Exhibit B.Interrogatory Deficiency Letter.pdf(156826 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Assa Realty, LLC
Opposer,

v.

The Solution Group Corp.
Applicant,

Trademark Application
Mark: CASSA
Application Serial No.: 85900657
Filed: April 10, 2013
Published: February 4, 2014
Opposition No.: 91215734

**APPLICANT'S RESPONSE TO OPPOSER'S
MOTION TO SET ASIDE ADMISSIONS**

Applicant responds to Opposer's above captioned motion, as follows:

Opposer relies on the need of its principals to observe certain Jewish Holidays and the purpose Opposer bases its motion on the following allegations:

1. The requests are manifestly improper.
2. The need of two of its principals to observe certain Jewish Holidays.
3. Mr. Migliaccio's medical issues.
4. The delay does not prejudice Applicant.

Applicant respectfully disagrees with Opposer's purported bases for justifying the withdrawal of the admitted requests.

1. Applicant's requests are not manifestly improper.

Applicant's First Set of Requests for Admissions was served on October 3, 2014, after receiving Opposer's deficient answers to Applicant's interrogatories and responses to Applicant's First Set of Requests for Production of Documents on September 8, 2014. See Exhibit 6 and 7, attached to Opposer's motion *sub judice*.

Opposer's answer to interrogatory No. 15, for example, directs Applicant to 600 + documents to find the answer to the identification of use of the mark CASSA for the services listed in Opposer's Application serial No. 85/955,568. It is a proper, and very relevant question, to identify which of the services listed in Opposer's application (based on Section 1a) were in use prior to April, 2013 (Applicant's filing date). Opposer's evasive, and improper answer, to interrogatory No. 15 forced Applicant to seek the information with request Nos. 1 through 21.

Similarly, interrogatory No. 13 asks for the identification of experts to testify on the issues involved in this litigation (i.e likelihood of confusion). See Exhibit 6, attached to Opposer's motion, where Opposer objects to the interrogatory and makes an elusive and vague statement suggesting future response at an undetermined date. Opposer's improper answer to interrogatory No. 13 required Applicant to formulate request Nos. 22 through 24, 27 through 29.

Lastly, the convoluted answer to interrogatory No. 17 seeking to identify instances of actual confusion required Applicant to determine whether any documents exist purporting to show actual confusion.

Part B of Applicant's requests merely refers to the "genuineness" of the documents. It does not relate to relevancy or what the documents purport to show. Thus, the admissions would not be dispositive of the merits or the veracity of its contents.

Therefore, it is clear that Applicant's First Set of Requests for Admissions were justified and necessary to advance discovery in this case.

In fact, the same cannot be said with respect to Opposer's belated responses to said requests. Opposer merely submitted, after the deadline, mechanical denials of all requests. Some of the denials contradict Opposer's answers elsewhere. For example, Opposer denies request No. 27 thus taking the position that "CASSA" is a surname. In its motion, however, Opposer states that it means "home" in Italian and Spanish. Opposer's motion Par. 2. Applicant disagrees because it is CASA what means home in Spanish, and not CASSA. And the surname of its

principals is ASSA, and not CASSA. Therefore, Opposer should not deny request No. 27. In sum, the mechanical denials of all the requests shows Opposer's bad faith and is an attempt to block Applicant's discovery.

2. The need of two principals to observe Jewish holidays identified in Exhibit "A", attached.

The Jewish holidays identified by Opposer in its motion are not included in the official federal holiday list. 5 USC §6103. The two principals that observe the Jewish holidays in question have not participated in the preparation of discovery documents in the past. See answer to interrogatory No. 14, Exhibit "6" in Opposer's motion naming Mr. Robert Lebensfeld as the only person participating in the preparation of the answers to the interrogatories. The answers were not signed under oath by anyone, as requested by the Rules. *Id.* See also Applicant's deficiency letter dated October 29, 2014 bringing this matter to Opposer's attention, Exhibit "B", attached. Assuming that the two principals participation was critical to responding to the requests, there were no holidays between October 17, 2014 and November 3, 2014. Also, at no time did Opposer contact Applicant to request an extension of time.

3. Mr. Migliaccio's health issues.

As far as Mr. Migliaccio's health issues, there is no allegation that Mr. Migliaccio's participation was important, nor the relevant dates of his medical issues, or any other reason that would justify the delay. In fact, most of the communication with Mr. Migliaccio's office has been through another attorney, Joel Scott Ray, Esq., including the motion *sub judice*.

4. The delay is prejudicial to Applicant.

Discovery started on June 12, 2014 and was scheduled to end on December 9, 2014. This left eight days for finalizing discovery after Opposer decided to withdraw its admission. Applicant relied on Opposer's admissions to forego a motion to compel answers or to further address the deficiencies in Opposer's responses. To hold otherwise will require additional proceedings.

Applicant was justified in relying on the deadlines provided by the Rules. Opposer's hollow and immaterial assertions are insufficient to set aside the deemed admissions.

Dated: December 12, 2014

Respectfully submitted,

/s/ Jesus Sanchelima

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed electronically by mutual agreement on this 12th day of December 2014 to:

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By: /s/ Jesus Sanchelima
Jesus Sanchelima

Exhibit “A”

Jewish holidays and free days

Yom Kippur- from sundown on Friday, October 3 to nightfall on Saturday, October 4, 2014.

(http://www.huffingtonpost.com/2014/10/02/yom-kippur-2014_n_5920678.html, last visited 12/5/2014).

Free – October 5 through 7.

Sukkot - Wednesday, October 8 (at sundown) – 15, 2014

(http://www.chabad.org/holidays/jewishnewyear/template_cdo/aid/671894/jewish/When-is-Sukkot-in-2014-2015-2016-and-2017.htm, last visited 12/5/2014)

Shemini Atzeret - Wednesday, October 15 (at sundown)-17 , 2014

(http://www.chabad.org/holidays/JewishNewYear/template_cdo/aid/671897/jewish/When-is-Shemini-Atzeret-Simchat-Torah-in-2014-2015-2016-and-2017.htm, last visited 12/5/2014)

Simchat Torah – Friday, October 17, 2014

(<http://www.day-finder.com/simhat-torah-2014.php>, last visited 12/5/2014)

Free – October 18 through November 3.

Exhibit “B”

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October 29, 2014

Richard Migliaccio, Esq.
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**Re: Insufficient Answers to First Set of Interrogatories
The Solution Group Corp. v. Assa Realty, LLC (CASSA)
Our File. 340152**

Dear Mr. Migliaccio:

I acknowledge receipt of your September 8, 2014 correspondence. I will address the content of your letter as follows:

**I. Our Objections to The Solution Group Corp. v. Assa Realty, LLC (CASSA)
Answer to The Solution Group Corp. First Set of Interrogatories**

Interrogatory Response No. 6

Documents require more specificity. Your answer "See Documents Bates stamp AR0001-AR0619" As per Federal Rules of Civil Procedure, Rule 33.(d) it is required to specify the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could.

Interrogatory Response No. 7

Documents require more specificity. Your answer "a. Newspaper articles and c. Copyright registrations." As per Federal Rules of Civil Procedures, Rule 33.(d) is it required to specify the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could.

Interrogatory Response No. 8

We are asking that your client give us an approximate dollar amount for Opposer's annual advertising and promotional expenditures for its services. Your answer "The annual expenses for advertisement and promotion for all properties that use Opposer's Mark for this year is projected to be \$375,000.00." This is being objected. Please provide the approximate amount of what Opposer actually spent.

Interrogatory Response No. 10

We asked that you provide the advertising media used by Opposer, to promote its good and services, by listing the names of the companies, addresses and duration of the advertisements using Opposer's Marks. Your answer "Websites on the Internet, internet advertisement and magazines." Please specify as to what websites were used? Which Internet advertisement? Which Magazines? In addition to the address and duration of advertisement for each source.

Interrogatory Response No. 13

We are not aware of any authority that shields the party from disclosing the identity of its experts, nor the identification of the documents generated by the expert(s).

Interrogatory Response No. 17

Opposer replied using the Mark on its website and in photographs. These are not instances of actual confusion. Opposer is being asked to identify "instances" of actual confusion such as misdirected mail, etc. If there has not been any, then Opposer should so state. Otherwise the particulars of the purported actual confusion instance should be stated.

Richard Migliaccio, Esq.

October 29, 2014

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It is incumbent upon your clients to respond by articulating their objections (with particularity) to those interrogatories which they believe to be objectionable, and by providing the information sought in those interrogatories which they believe are proper. See *Amazon Technologies, Inc. v. Jeffrey S. Wax*, 93 USPQ2d 1702 (TTAB 2009); *Medtronic, Inc. v. Pacesetter Systems, Inc.*, 222 USPQ 80, 83 (TTAB 1984).

Lastly, TBMP 405.04(c) requires that interrogatories must be answered by (A) the party to whom they are directed; or (B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by an officer or agent, who must furnish the information available to the party. Although the term “agent” includes an attorney, like an officer’s or partner’s answers, the answer must contain the information available to the party served. *Allstate Insurance Co. v. Healthy America Inc.*, 9 USPQ2d 1663, 1665 (TTAB 1988). An attorney who answers interrogatories on behalf of a corporation, partnership, association, or governmental agency may be exposed to additional discovery and possibly even disqualification. 37 CFR § 10.63; *Allstate Insurance Co. v. Healthy America Inc.*, 9 USPQ2d 1663 n.4 (TTAB 1988). Furthermore, the interrogatories answers must be sworn under oath, and the responses are void of any sworn statement by Opposer or its agents.

Therefore, absent a supplement to **Assa Realty, LLC (CASSA)** answer’s to First Set of Interrogatories, within ten (10) days from the date of this letter, curing the above mentioned deficiencies, will compel us to file a motion to compel the answers.

Very truly yours,

/Jesus Sanchelima/

Jesús Sanchelima, Esq.

File

JS/jp